IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 35 of 2001.

Date of Decision: 18-5-2007.

Raj Kumar. Petitioner.

Versus

State of H.P. Respondent.

Coram

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]?

For the petitioner : Mr. Rakesh Jaswal, Advocate.

For the respondent : : Mr. M.S. Chandel, Advocate General with Mr. J.S. Guleria, Deputy Advocate General.

Surinder Singh, J (oral)

The instant petition has been preferred under Section 397/401 of the Code of Criminal Procedure against the judgment dated 22-2-2001 passed by Sessions Judge, Shimla in Criminal appeal No. 17-S/10 of 2000 vide which the appeal filed against the judgment dated 26-7-2000 by the Chief Judicial Magistrate, Shimla in Case No. 238/2 of 1997/95 was dismissed whereby the conviction and sentence of the petitioner under Sections 279, 337 and 338, I.P.C. were maintained.

Brief facts of the case are that on 30-5-1995, the petitioner was driving Bus No. HP-32-0530 from Chhota Shimla to Bus Stand, when it reached near St. Edward's School, it hit the road side railing which collapsed and fell towards school side thereby causing injuries to PW3 Vijay Deshta and fractured the leg of Saurav Sood (both students). The

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[1] Whether reporters of the Local papers are allowed to see the judgment?

matter was reported to the Police by Vijay Deshta aforesaid and a case was registered under Sections 279, 337 and 338 of the Indian Penal Code vide FIR No.111 of 1995 in Police Station (East) Shimla. Mechanical examination of the vehicle and medical examination of the injured were conducted. The police took the photographs of the place of incidence. On completing the investigation, it was presented before the Chief Judicial Magistrate for trial.

The accusation was put to the petitioner. He pleaded not guilty and claimed trial. Thereafter he was tried for the alleged offences. The prosecution examined the injured students Vijay Deshta and Saurav Sood., the Principal of the St. Edward's School and also the Doctor who had conducted the medico legal examination of the injured. The petitioner was also examined under Section 313 of the Code of Criminal Procedure. The circumstances which were attendant upon him were put to him were denied. He did not lead any defense.

Upon hearing the learned counsel for the parties and going through the record, the petitioner was found guilty thus convicted under the aforesaid Sections and sentenced to under go rigorous imprisonment for a period of six months and to pay a fine of Rs. 500/- under Section 279 of the Indian Penal Code, three months rigorous imprisonment and fine of Rs. 300/- for offence punishable under Section 337 of the Indian Penal Code and six months rigorous imprisonment and a fine of rupees 500/- for the offence under Section 338 of the Indian Penal Code and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months. Feeling aggrieved and dis-satisfied with the impugned judgment of conviction and sentence, the petitioner had filed an appeal before the Sessions Judge which was dismissed.

Now the petitioner has filed this revision petition assailing the impugned judgment on the ground that the evidence was not properly appreciated by the courts below and further that the petitioner was not

a previous convict, therefore, the benefit of probation should have been granted.

I have heard Shri Rakesh Jaswal, Advocate for the petitioner and Shri J.S. Guleria, Law Officer for the respondent and examined the record of the case of both the courts below. PW4 Master Saurav Sood, an injured, has substantiated the case of the prosecution. He had sustained the fracture on his leg. Vijay Deshta, the another student, (PW5) has also given the similar version as set out by the prosecution. He had suffered injuries on account of falling of the road side railing. Dr. L.R. Verma (PW6) has substantiated the injuries sustained by the aforesaid injured and proved Medico-legal certificates.

On the perusal of the aforesaid statements as also the photographs, it is absolutely clear that the bus in question was being driven by the petitioner, it had hit the railing which fell down and injured above witnesses. This incident took place on the National Highway which was sufficiently wide. Normally, the Bus should not have hit the railing. The petitioner has not explained the circumstances as to how the bus got struck with the railing. In absence of this explanation, it is apparent that due care and caution has not been taken by the petitioner to avoid the accident. Therefore, the case of the prosecution stood fully proved and both the courts below have rightly held the petitioner guilty of the offences under Section 279, 337 and 338 of the Indian Penal Code.

But as far as the substantive sentence is concerned, it can be modified on the ground that now almost ten years have elapsed from the date of the alleged accident. Keeping in view the facts and circumstances of the case and on the perusal of the record, I did not find any previous criminal history of the petitioner who was aged about at the time of accident. The petitioner is said to be a contract employee in H.R.T.C. and in case the sentence remains, he may loose the job.

Keeping in view the entire facts and circumstances, interest of justice would be met if in lieu of the substantive sentence to the petitioner, he is enlarged on probation by giving him the benefit of Section 3 of the Probation of Offenders Act. Thus ordered accordingly. However, in addition, the petitioner shall deposit Rs. 1000/- as the cost of the proceedings in trial Court. Further, the petitioner shall also pay an amount of Rs. 5000/- to the injured Saurav Sood who had sustained grievous injuries and also Rs. 2000/- to injured Vijay Deshta as compensation to them. The total amount of Rs. 8000/- shall be deposited in the trial Court within a period of two months from today. On the deposit of the aforesaid amount, the trial Court shall disburse the amount to the above injured as stated supra. In case, the aforesaid amount is not deposited within the stipulated time, the revision petition shall be deemed to have been dismissed.

(Surinder Singh)
Judge.

May 18, 2007.
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